UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

HILLSIDE CARTING COMPANY, INC., ROYAL CARTING, INC., and SEASIDE CARTING, INC.

Employers

and Case No. 29-UC-480

LOCAL 813, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Leslie Breeding, a Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Hillside Carting Company, Inc., herein called Hillside, a New York corporation with its principal office and place of business located at 170-21 Douglas Avenue, Jamaica, New York, herein called the Jamaica facility, has been engaged in the business of waste removal and garbage disposal. During the past year, which period is representative of its annual operations generally, Hillside, in the course and conduct of its business operations, purchased and received at its Jamaica

facility, goods and materials valued in excess of $50,000 directly from entities located outside the State of New York.

The parties further stipulated that Royal Carting, Inc., herein called Royal, a New York corporation with its principal office and place of business located at the Jamaica facility, has also been engaged in the business of waste removal and disposal. During the past year, which period is representative of its annual operations generally, Royal, in the course and conduct of its business operations, purchased and received at the Jamaica facility goods and materials valued in excess of $50,000 directly from suppliers located outside the State of New York.

In addition, the parties stipulated that Seaside Carting, Inc., herein called Seaside, a New York corporation with its principal office and place of business located at the Jamaica facility, has been engaged in the business of waste removal and disposal. During the past year, which period is representative of its annual operations generally, Seaside, in the course and conduct of its business operations, purchased and received at its Jamaica facility goods and materials valued in excess of $50,000 directly from suppliers located outside the State of New York.

Based upon the above, I find that Hillside, Royal and Seaside, herein collectively called the Employers, jointly, and each of them, are engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The record shows that since at least the mid to late 1980s, the Petitioner has had a collective bargaining relationship with the Employers. This relationship has been embodied in separate collective bargaining agreements, one covering the waste removal employees employed by Royal, and the two others covering units of employees employed by Hillside and Seaside, respectively. The current agreements, which are

virtually identical, are effective from December 1, 1996, through November 30, 1999.[1] In its petition, filed on May 5, 1999, the Petitioner seeks to consolidate the above described employees into one unit. . The Petitioner contends that the Employers constitute a single employer with common ownership, supervision, shared facilities and integrated operations. However, the Petitioner concedes that the Employers' operations have been intermingled for several years. It also acknowledges it has voluntarily maintained separate contracts with each of these companies despite their operational integration. Nor is there record evidence of any recent substantial change in the Employers' operation or in the job classifications of the employees employed by the Employers. Prior to the filing of the petition, the Petitioner had never sought to change the scope of any of the above mentioned units.

Unit clarification proceedings are designed to promote stability in bargaining by clarifying unit placement or unit scope issues that the parties are unable to resolve. Because it would disrupt bargaining relationships that parties enter into voluntarily, the Board is reluctant to modify historical bargaining units absent evidence of recent changes (i.e. the creation of a new position, significant modifications in the duties of employees, changes in an employer's organizational structure) that raise questions regarding the continued viability of the unit. Union Electric Co., 217 NLRB 666, 667 (1975); Batesville Casket Company, Inc. 283 NLRB 795 (1987). This is particularly true where the petition is filed during the term of a contract. The Board will generally dismiss such petitions as untimely absent recent changes that would warrant reconsideration of the scope or composition of the unit. Wallace Murray Corp., 192 NLRB 1090 (1971); Edison Sault Electric Co., 313 NLRB 753 (1994); Lennox Industries, Inc. 308 NLRB

[1] Approximately 6 employees are covered by the contract between the Petitioner and Royal. The Hillside and Seaside agreements cover two employees each.

1237 (1992).[2] In the instant matter, the petition was filed nearly 7 months prior to the expiration of the contract. Inasmuch as there have been no recent operational changes that would warrant a departure from the Board's policy of refusing to clarify units during the term of a contract,[3] I find that the instant petition is untimely filed.[4] I am therefore dismissing the petition without prejudice to its refiling at an appropriate time.[5]

ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.[6]

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

[2] In Lennox Industries, supra, a petition was processed midterm where a recent corporate reorganization rendered the existing unit inappropriate. In certain other limited circumstances (i.e. resolving the supervisory status of certain employees, or where a party reserved its right during negotiations to file go to the Board), the Board will process unit clarification petitions mid term. Western Colorado Power Co., 190 NLRB 564 (1971); Baltimore Sun Co., 296 NLRB 1023 (1989). None of those circumstances are present here.

[3] The Petitioner appears to argue that in the past, despite signing three separate contracts, the "units had been treated as a single unit" with respect to seniority, overtime and the designation of shop stewards. During the course of recent grievance meetings at which seniority and overtime were discussed, the Employers, according to the Petitioner, took the position that the contracts continued to cover separate units. The Petitioner appears to further contend that this is the type of "change" that would warrant the processing of a unit clarification petition. With regard to seniority and the designation of shop stewards, the past practice is not clear from the record. Moreover, assuming that the Employers have changed their position regarding these issues, this is not the type of operational change that would warrant the midterm clarification of a unit. If anything, it appears that the Petitioner is arguing that the Employers are making unilateral changes in terms and conditions of employment. A unit clarification hearing is not the proper forum for resolving such allegations.

[4] In University of Dubuque, 289 NLRB 349 (1988), the Board processed a unit clarification petition filed approximately nine months prior to the expiration of the contract. However, the contract in that case specified that negotiations were to begin six months prior to its expiration, or 98 days prior to the petition's filing. The Board based its finding that the petition was not untimely upon the fact it was filed slightly more than three months before negotiations were to begin.

[5] Rock-Tenn Company, 274 NLRB 772 (1985), cited by the Petitioner is distinguishable from the instant matter as the petition therein was timely filed approximately 99 days prior to the contract's expiration.

[6] Since I have found that the petition was untimely filed, I will not discuss the evidence adduced at the hearing bearing on the Employers' status as a single employer.

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by June 28, 1999.

Dated at Brooklyn, New York, this 14th day of June, 1999.

/S/ ALVIN BLYER

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Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
385 7500 Brooklyn, New York 11201